2009

David L. Gladwell v. Douglas James Reinhart : Brief of Appellee

Utah Supreme Court

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.
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Duane H. Gillman, Michael F. Thomson, Jessica G. Peterson; Durham, Jones, and Pinegar; Attorneys for Appellee.

IN THE UTAH SUPREME COURT

<table>
<tr><td>In re
DOUGLAS JAMES REINHART,
Debtor.</td><td rowspan="2">OPENING BRIEF OF APPELLEE

Case No. 20091087-SC

United States Court of Appeals
Tenth Circuit Case No. 09-4028
(U.S. District Court No. 2:08-cv-562)</td></tr>
<tr><td>DAVID L. GLADWELL, Trustee,
Appellant,
v.
DOUGLAS JAMES REINHART,
Appellee.</td></tr>
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ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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STATEMENT OF JURISDICTION

This case is before the Court pursuant to the Court's Order of Acceptance, granting the Tenth Circuit's Order Certifying Questions of Law to the Utah Supreme Court. (A copy of the Order of Acceptance and the Order Certifying State Law Question are included as Addenda A and B, respectively.) This Court also has jurisdiction pursuant to Utah Code Ann. § 78A-3-102(1).

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Pursuant to the Order of Acceptance, the issue presented for review is:

Can a Keogh plan be "described in" section 401(a) of the IRC[1] despite failing to fulfill that section's requirements for qualification, thereby entitling debtor to exempt the plan from his bankruptcy estate property?

STANDARD OF REVIEW

On questions before this Court pursuant to certified orders, the Court identifies and explains the Utah law to give guidance to the federal court. "The Tenth Circuit has asked us for guidance in this specific area of Utah law. Accordingly, we are not presented with a decision to affirm or reserve, and traditional standards of review do not apply." Robert J. DeBry and Associates, P.C. v. Qwest Dex, Inc., 2006 UT 41, ¶ 11, 144 P.3d 1079.

[1] A copy of 26 U.S.C. § 401(a) is in the Appellee's Addendum at Addendum E.

DETERMINATIVE PROVISIONS

The statute whose interpretation is determinative of the appeal or of central importance to the appeal is Utah Code Ann. § 78-23-5(1)(a)(x) (2000), which states as follows:

> (1) (a) An individual is entitled to exemption of the following property:
>
> . . .
>
> (x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended.

Utah Code Ann. § 78-23-5(1)(a)(x) (2000).[2]

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition in the Federal Courts.

The instant appeal arises from the Order on Trustee's Objection to Exemptions (the "Exemptions Order") entered by the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court") on June 8, 2008.[3] The

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[2] A copy of the 2000 version of the statute is in the Appellee's Addendum at Addendum F. The statute has since been recodified. No significant amendments have been made to the provision at issue. The current version of the statute is found at Utah Code Ann. § 78B-5-505(1)(a)(xiv) (2008). A copy of the 2008 version of the statute is in the Appellee's Addendum at Addendum G.

[3] A copy of the Exemptions Order entered by the United States Bankruptcy Court for the District of Utah is in the Appellee's Addendum at Addendum C.

Exemption Order overruled the objection filed by Appellant David L. Gladwell, chapter 7 trustee ("Trustee" or "Appellant"), to an exemption claimed by Appellee Douglas James Reinhart ("Debtor" or "Appellee"), in and to funds held in a Keogh retirement plan (the "Plan").

The Trustee argued that the Plan should not be exempt under Utah law because of technical failures in the way the Plan was operated, and urged the Bankruptcy Court to insert a "qualified under" (rather than "described in") requirement in the Utah exemption statute. On May 15, 2008, after considering evidence and oral argument during two days of trial, the Bankruptcy Court made its findings of fact and conclusions of law on the record, thereby overruling the Trustee's argument and allowing the Debtor to exempt the Plan.

On June 8, 2008, the Bankruptcy Court entered the Exemption Order, and the Trustee thereafter appealed the Order to the United States District Court for the District of Utah (the "District Court"). On February 6, 2009, the District Court affirmed the Exemption Order.[4]

The Trustee then appealed the Exemption Order to the United States Court of Appeals for the Tenth Circuit. After hearing oral argument, the Tenth Circuit

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[4] A copy of the Order affirming the Exemptions Order entered by the United States District Court for the District of Utah is in the Appellee's Addendum at Addendum D.

entered an Order Certifying State Law Question, which certification was accepted by this Court pursuant to its Order of Acceptance entered March 8, 2010.

B. Statement of Facts Relevant to the Issue Presented for Review.

1. The Debtor commenced his chapter 7 bankruptcy case on January 28, 2000. At that time, the funds in the Plan amounted to $333,835.65, and thereafter the Debtor filed schedules in the bankruptcy case claiming that the funds in the Plan were exempt under Utah Code Ann. § 78-23-5(1)(a)(x) (2000). (Aplt. App. at 16-17).[5]

2. On June 15, 2000, the Trustee objected to the Debtor's claim that the funds in the Plan were exempt. With respect to the main issue on appeal, i.e., whether the Plan is a "plan or arrangement that is described in Section 401(a)" of the Internal Revenue Code, the entire basis articulated by the Trustee was as follows: "upon information and belief, the plan[] may not be qualified under applicable law." (Aplt. App. at 12-13).

3. It was not until over six years later, on October 16, 2006, that the Trustee finally identified his specific theories and bases for objecting to the exemption in the Plan, and sought to prosecute his objection. (Aplee. Supp. App. at 19).

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[5] References to the record are designated as Aplt. App. at ____ or Aplee. Supp. App. at _____, referring, respectively, to pages of the Appellant's Appendix or the Appellee's Supplemental Appendix reflected in the Tenth Circuit's docket.

4. The Bankruptcy Court found, relying on the Trustee's own expert witness, that all of the alleged operational failures in the Plan are correctable through certain IRS procedures. (Aplt. App. at 47, ll. 2-4; 228-229).

5. According to the Trustee's expert witness, plan disqualification due to operational failures, which is the "most common" type of failure, results in a loss of certain tax benefits. (Aplt. App. at 204, ll. 14-19; 223, ll. 8-17). Thus, because "even the slightest [operational] failure" would result in a loss of tax benefits, the IRS has created a program called "Employee Plans Compliance Resolution System" ("EPCRS"). (Aplt. App. at 225-226). The purpose of EPCRS is to "create a system whereby employers could make correction of what originally started out as only operational defects," so that "the IRS would not impose the sanctions, the tax consequences that they would otherwise be authorized to impose." (Aplt. App. at 227).

6. Notably, when asked about whether the alleged operational defects he raised concerning the Plan were correctable under EPCRS, the Trustee's expert witness testified that all of the operational defects were correctable. (Aplt. App. at 228-229). In fact, he distinguished between the defects he identified, which are correctable, and more serious actions which could not be corrected:

> Fiduciary breaches, for example, are not correctable under this program. The use of plan assets in such a fashion as to cause the plan to be deemed to be operated outside the parameters of – of Section 401[a] entirely would also be a means.

> A simple example would be if the plan were simply used as a bank account for the company that sponsored it, and the money was haphazardly transferred in and out. The IRS would claim that in those cases the plan is not being used for the exclusive benefit of the employees, and violations of the exclusive benefit rule cannot be corrected under this program. I don't believe that errors here are errors that would fall outside of the parameters of the [EPCRS] program.

(Aplt. App. at 229, ll. 11-24).

7. The Debtor did not make any loans to himself, or to his family members, through the Plan. (Aplee. Supp. App. at 31, ll. 14-17). While a $10,400 loan made by the Plan to Colleen Parker (the "Parker Loan") was an operational defect, that loan was in an amount that was "approximately three percent of the total contributions" to the Plan. (Aplt. App. at 42, ll. 4-7). Also, the funds for such loan were not withdrawn from the Plan's custodial account at Charles Schwab & Co. ("Schwab"). (Aplt. App. at 41, ll. 17-24). In fact, the Parker Loan was described by the Trustee's expert witness as a "technical" violation of the terms of the Plan. (Aplt. App. at 212, ll. 9-10).

8. As of the Debtor's bankruptcy filing, the funds in the Plan were held in an account at Schwab—who was the Plan custodian—and the Plan consisted of two components: a money purchase plan and a profit sharing plan. (Aplt. App. at 39, ll. 13-17). Although the Plan consisted of two components, all funds contributed to the Plan were deposited into the same account with Schwab. (Aplee. Supp. App. at 37-41).

9. The alleged operational defect in the Plan, concerning contributions that exceeded the maximum limit in the year 2000, was only $1,455.75 in excess of such limit. (Aplt. App. at 46, ll. 14-18).

10. The IRS has not disqualified the Plan. (Aplt. App. at 47, ll. 11-13).

SUMMARY OF ARGUMENTS

The question before this Court is whether a retirement plan that is operationally in default as of the bankruptcy filing date can nevertheless be "described in" the Utah exemption statute. While the Trustee has argued that a retirement plan "must necessarily be" operationally "tax qualified" under the IRC in order to be exempt under Utah law, the Utah exemption statute uses a broader standard of being "described in" the IRC, thereby allowing a plan to be exempt where its operational failures are correctable through IRS procedures.

At trial before the Bankruptcy Court, the Trustee's own expert witness confirmed that each of the alleged defects in the Plan—all of which were operational defects as opposed to plan document (or structural) defects—were correctable through IRS procedures. On appeal, the Trustee seeks to rewrite the Utah exemption statute in such a way that would cause debtors to lose their exemptions in retirement accounts based on technical operational defects, even where the IRS views the defects as correctable.

The Trustee's interpretation of the Utah exemption statute is overly rigid and will cause unintended harsh results. Under the Trustee's view the slightest failure by an employer to correctly operate a retirement plan would result in debtor employees losing their retirement account exemptions—even if such failure were correctable. The Debtor asks this Court to uphold the Court's long history of construing exemption laws liberally in favor of debtors, and to hold that a Keogh plan can be "described in" section 401(a) of the IRC, despite failing to fulfill that section's requirements for qualification, where the qualification failures are correctable through IRS procedures.

ARGUMENT

I. A KEOGH PLAN CAN BE "DESCRIBED IN" SECTION 401(a) OF THE IRC, DESPITE FAILING TO FULFILL THAT SECTION'S REQUIREMENTS FOR QUALIFICATION, WHERE THE FAILURES ARE CORRECTABLE THROUGH IRS PROCEDURES

This Court should confirm the conclusions made by the Bankruptcy Court and the District Court by holding that a Keogh plan can be "described in" section 401(a) of the IRC, despite failing to fulfill that section's requirements for qualification, where failures are correctable through IRS procedures. At issue in this appeal is the following Utah exemption statute for retirement accounts:

> (1) (a) An individual is entitled to exemption of the following property:
>
> . . .
>
> (x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a

> participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended.

Utah Code Ann. § 78-23-5(1)(a)(x) (2000) (emphasis added).[6] In the Bankruptcy Court, and on appeal to the District Court, the Trustee argued that the foregoing statutory text, "described in," should be read as requiring a plan to be operationally "qualified under" Section 401(a) of the IRC in order to be exempt. Those courts rejected that argument, and this Court should do the same.

Pursuant to general principles of statutory interpretation, this Court should "first look to the plain language, recognizing that [the Court's] primary goal is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." In re Kunz, 2004 UT 71, ¶ 8, 99 P.3d 793 (internal quotations omitted) (citation omitted). In addition, courts should "assume that each term . . . was used advisedly; thus the statutory words are read literally, unless such a reading in unreasonably confused or inoperable." Kitches & Zorn, L.L.C. v. Kim, 2005 UT App. 164, ¶ 8, 112 P.3d 1210.

[6] A copy of the 2000 version of the statute is in the Appellee's Addendum at Addendum F. The statute has since been recodified. No significant amendments have been made to the provision at issue. The current version of the statute is found at Utah Code Ann. § 78B-5-505(1)(a)(xiv) (2008). A copy of the 2008 version of the statute is in the Appellee's Addendum at Addendum G.

But, if the Court determines the statute is ambiguous, it "'then seek[s] guidance from legislative history and relevant policy considerations.'" In re Kunz, 2004 UT 71, ¶ 8 (citation omitted). In so doing, this Court "construe[s] exemption statutes 'liberally . . . in favor of the debtor to protect him and his family from hardship.'" Id. (citation omitted).

A. Plain Language Interpretation

Applying the principles described above, the exemption statute plainly states a retirement plan must be "described in"—and not "qualified under"—Section 401(a) of the IRC in order to be exempt. Utah Code Ann. § 78-23-5(1)(a)(x) (2000). In fact, the statute does not even use the word "qualified." See id. See also Kitches & Zorn, L.L.C. v. Kim, 2005 UT App. 164, ¶ 8, 112 P.3d 1210 (stating that if legislature had intended to use different word, it could have done so).

When faced with a similar Pennsylvania exemption statute, which did not use the term "qualified" but instead used the phrase "provided for," one court has held that the omission of the term "qualified" results in the exemption of "plans which are not technically 'tax qualified.'" In re Kaplan, 162 B.R. 684, 697 (Bankr. E.D. Pa. 1993).[7] In so doing, the court recognized the possibility that the debtor

[7] Similarly, many courts have held that an ERISA qualified retirement plans need not be "tax qualified" in order to be excluded from the bankruptcy estate. See In re Sewell, 180 F.3d 707, 711 (5th Cir. 1999); In re Craig, 204 B.R. 756, 760 (D.N.D. 1997); In re Handel, 301 B.R. 421, 432–33 (Bankr. S.D.N.Y. 2003); In re Bennett, 185 B.R. 4, 6 (Bankr. E.D.N.Y. 1995).

could correct the plan defects, and specifically noted that the retirement plan had not been disqualified by the IRS. See id. at 696–97. The court recognized that the phrase "provided for" is broader than "qualified under," and would thus allow a debtor whose plan had not been disqualified by the IRS to exempt the plan where the plan defects were correctable. See id.

Like the Pennsylvania statute in Kaplan, the Utah exemption statute uses the broader phrase "described in," rather than the more specific phrase "qualified under." Utah Code Ann. § 78-23-5(1)(a)(x) (2000). Thus, while the Utah exemption statute requires the retirement plan documents to be as "described in" the IRC, it also allows some latitude for correcting operational failures by not requiring the plan to be "qualified under" the IRC.

Also, like the retirement plan in Kaplan, the Plan has not been disqualified by the IRS and all of the operational defects in the Plan are correctable. Therefore, pursuant to the plain language of the Utah exemption statute, this Court should find that a Keogh plan can be "described in" section 401(a) of the IRC, despite failing to fulfill that section's requirements for qualification, where the qualification failures are correctable through IRS procedures.

B. If the Exemption Statute is Ambiguous it Should be Liberally Construed in Favor of the Debtor

Even if this Court determines that the Utah exemption statute is ambiguous, the result should be the same. Where an exemption statute is ambiguous, this

Court looks to "legislative intent and policy considerations" and construes the statute "liberally . . . in favor of the debtor to protect him and his family from hardship." In re Kunz, 2004 UT 71, ¶ 8, 99 P.3d 793.

As recognized by this Court in another case involving retirement exemptions, "[o]nly one sentence in the entire [Utah] exemption statute indicates any legislative purpose, stating that certain exemptions exist 'for the support of the individual and his dependents.'" Id., 2004 UT 71, ¶ 10 at 795 (citation omitted). Notably, this "legislative purpose . . . describes the policy behind all exemption statutes; namely, providing debtors with sufficient support to prevent them from becoming public charges." Id. Thus, this Court has "historically deferred to the interests of debtors by liberally construing ambiguous exemption statutes in their favor." Id. (citation omitted). See also Smith v. Mosier (In re Smith), 2009 UT 3, ¶ 7, 201 P.3d 1001 (recognizing that "the Utah Supreme Court has consistently applied a liberal construction in favor of debtors to protect debtors and their families from hardship").

Here, the foregoing legislative purpose and policies are upheld by allowing exemptions for retirement plans that have plan documents which are "described in" the IRC but have correctable operational defects. Conversely, interpreting the statute as requiring a plan to be perfectly compliant operationally on the bankruptcy petition date, regardless of correctability, is not a liberal construction and would increase the odds of debtors becoming public charges.

By way of background, plan disqualification due to operational failures, which is the "most common" type of failure, results in a loss of certain tax benefits. (Aplt. App. at 204, ll. 14-19; 223, ll. 8-17). Thus, because "even the slightest [operational] failure" would result in a loss of tax benefits, the IRS has created a program called "Employee Plans Compliance Resolution System" ("EPCRS"). (Aplt. App. at 225-226). The purpose of EPCRS is to "create a system whereby employers could make correction of what originally started out as only operational defects," so that "the IRS would not impose the sanctions, the tax consequences that they would otherwise be authorized to impose." (Aplt. App. at 227).[8]

One example of a correctable operational failure in this case was the Debtor's failure to include one employee (the Debtor's spouse) as a Plan

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[8] EPCRS is based in part on the following principles: plan sponsors should be allowed to make "voluntary and timely *correction* of plan failures;" and "plan sponsors should be able to rely on the availability of EPCRS in taking *corrective action to maintain* the tax-favored status of their plans." See Rev. Proc. 2006-27, §1.02 (italics added). Accordingly, if a retirement plan sponsor corrects plan document or operational failures under EPCRS, the IRS treats the plan as continuing to satisfy the Internal Revenue Code Section 401(a) qualification requirements. See Rev. Proc. 2006-27, at §3.01.

participant.[9] According to the Trustee's expert, that failure is correctable but technically rendered the Plan disqualified as of the bankruptcy petition date. Under the Trustee's rigid view of the Utah exemption statute, that single failure would result in a debtor losing his entire retirement account even though the IRS would allow the failure to be corrected.

Now imagine if the Trustee's interpretation were imposed on all debtors in the State of Utah: countless debtors who participate in retirement plans would be at risk to lose their retirement funds if, as of the date of their bankruptcy filing, their employer had failed to include just one employee from participating in the retirement plan. Such a result is easily foreseeable, especially where large employers are required to administer plans involving hundreds or thousands of employees.

Surely the Utah Legislature did not intend bankruptcy debtors to lose their retirement funds because of technical, correctable plan failures that happened to exist at the moment the debtor filed his bankruptcy case. See Patterson v. Shumate, 504 U.S. 753, 764 (1992) (treatment of retirement benefits should "not vary based

[9] Notably, if the Debtor were improperly abusing the Plan, as has been argued by the Trustee, this omission never would have happened. Most cases where plans are abused have *included* spouses as plan participants, even though the spouses were not eligible employees. See In re Goldschein, 244 B.R. 595, 601–02 (Bankr. D. Md. 2000) (no exemption where debtor included non-employee spouse in retirement plan, made loans to himself from plan in excess of $400,000, and generally used plan as "personal piggy bank")

on the beneficiary's bankruptcy status," i.e., party should not receive "a windfall merely by reason of the happenstance of bankruptcy"). Instead, the reasonable explanation for the Legislature using the words "described in," as opposed to the strict phrase "qualified under," was to avoid such unintended harsh results by allowing an exemption where plan defects are correctable.

In this case, the plan operational defects were minor and correctable. As mentioned above, one defect was that one eligible employee (the Debtor's spouse) was omitted from the Plan. (Aplee. Supp. App. at 31, ll. 14-17). Another concerned a $10,400 loan made by the Plan to Colleen Parker (referred to as the "Parker Loan"), which loan was in the amount of only 3% of the Plan's assets, the funds were not withdrawn from the Plan's custodial account at Schwab, and the loan was not made to the Debtor or his family. (Aplt. App. at 41, ll. 17-24). In fact, the Parker Loan was described by the Trustee's expert witness as merely a "technical" violation of the terms of the Plan. (Aplt. App. at 212, ll. 9-10).

Another plan failure was the failure to allocate retirement contributions to the money purchase plan portion of the Plan (as opposed to the profit sharing portion of the Plan), which was an understandable error because all funds contributed to the Plan were deposited into the same account with Schwab. (Aplee. Supp. App. at 37-41). Finally, there was a contribution of excess funds to the Plan, in the amount of only $1,455.75, for the year 2000. (Aplt. App. at 46, ll. 14-18).

With respect to each of the foregoing operational failures, the Trustee's expert acknowledged (and the Bankruptcy Court found) that they were correctable through the IRS program EPCRS. (Aplt. App. at 47, ll. 2-4; 228-229). In fact, when asked whether the alleged operational defects he raised concerning the Plan were correctable under EPCRS, the Trustee's expert witness distinguished between the defects he identified, which are correctable, and more serious actions which could not be corrected:

> Fiduciary breaches, for example, are not correctable under this program. The use of plan assets in such a fashion as to cause the plan to be deemed to be operated outside the parameters of – of Section 401[a] entirely would also be a means.
>
> A simple example would be if the plan were simply used as a bank account for the company that sponsored it, and the money was haphazardly transferred in and out. The IRS would claim that in those cases the plan is not being used for the exclusive benefit of the employees, and violations of the exclusive benefit rule cannot be corrected under this program. *I don't believe that errors here are errors that would fall outside of the parameters of the [EPCRS] program.*

(Aplt. App. at 229, ll. 11-24) (emphasis added).

Thus, this case is not a case in which egregious acts were committed by a debtor to take advantage of his retirement plan. Instead, this case is representative of common operational failures that can occur in the administration of a retirement plan. Because the IRS allows such operational failures to be corrected, it is proper to interpret the Utah exemption statute as allowing exemptions for retirement plans that have correctable operational defects. Such an interpretation is wholly consistent with, and upholds, the legislative purpose and policies of Utah exemption statutes.

The same cannot be said for the Trustee's interpretation of the statute, where even the slightest failure by an employer to correctly operate a retirement plan would result in debtors losing their exemptions—even if such failure were correctable. See In re Copulos, 210 B.R. 61, 65 (Bankr. D.N.J. 1997) ("[T]he IRS itself offers many layers of opportunity to cure any operational defects before imposing the extreme sanction of disqualification" and thus "[i]t is doubtful whether this court could or should declare a plan disqualified without offering the plan a similar opportunity to cure."). See also In re Rosenbloom, 132 B.R. 970, 972 (Bankr. S.D. Fla. 1991) (allowing postpetition amendments to retirement plan). This is especially true where, as here, a retirement plan has not been disqualified by the IRS. See id. See also In re Baker, 195 B.R. 386, 393 (Bankr. N.D. Ill. 1996) (holding that plan qualified for tax exempt status because "the IRS had never found that the Plan failed to qualify for tax exempt status").

As a result, this Court should liberally construe the Utah exemption statute and find that a Keogh plan can be "described in" section 401(a) of the IRC, despite failing to fulfill that section's requirements for qualification, where the qualification failures are correctable through IRS procedures.

CONCLUSION

As set forth above, whether the statutory language of Utah Code Ann. § 78-23-5(1)(a)(x) (2000) is viewed as plain or ambiguous, this Court should hold that a Keogh plan can be "described in" section 401(a) of the IRC—and is therefore exempt under Utah law—despite failing to fulfill that section's requirements for qualification, where the qualification failures are correctable through IRS procedures.

DATED this 3rd day of May, 2010.

/s/ Duane H. Gillman
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **OPENING BRIEF OF APPELLEE** was served this 3rd day of May, 2010, via e-mail, via searchable PDF on CD, and via regular U.S. mail, postage prepaid upon the following:

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Tab A

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re:

Douglas James Reinhart,

Debtor.

David L. Gladwell, Trustee,

Appellant,

v.

Douglas James Reinhart,

Appellee.

Case No. 20091087-SC

09-4028

ORDER OF ACCEPTANCE

This matter is before the court upon the Certification of Question of State Law to this court by the United States Court of Appeals for the Tenth Circuit.

IT IS HEREBY ORDERED that the Utah Supreme Court accepts the following question certified to it:

1. Can a Keogh plan be "described in" section 401(a) of the IRC despite failing to fulfill that section's requirements for qualification, thereby entitling debtor to exempt the plan from his bankruptcy estate property?

The certifying court has filed copies of the briefs filed their court however, no other parts of the record in the matter have been filed with the Supreme Court.

Within fourteen days of the date of this order, counsel for the parties may advise this court as to what additional portions of the record they believe necessary for consideration of the certified question. Following the expiration of the fourteen days, this court will request any additional pieces of the record from the United States Court of Appeals for the Tenth Circuit and provide notice to the parties as to a briefing schedule.

FOR THE COURT:

3-8-10

Date

Matthew B. Durrant
Associate Chief Justice

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2010, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

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Dated this March 8, 2010.

By Susan Richards
Judicial Assistant

Case No. 20091087
U.S. COURT OF APPEALS, 09-4028

Tab B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

In re

DOUGLAS JAMES REINHART,

Debtor.

DAVID L. GLADWELL, Trustee

Appellant,

v.

DOUGLAS JAMES REINHART,

Appellee.

No. 09-4028
(D.C. No. 2:08-cv-562)
(D. Utah)

ORDER CERTIFYING STATE LAW QUESTION

Before **TACHA**, **HOLLOWAY**, and **KELLY**, Circuit Judges.

PER CURIAM

This case turns on whether Mr. Douglas Reinhart's (Debtor) Keogh Plan should have been exempted from his estate when he filed for Chapter 7 bankruptcy. To be exempt, the Utah Code requires the plan be "described in" section 401(a) of the Internal Revenue Code (IRC). *Utah Code Ann.* § 78-23-5 (2000).[1] The Bankruptcy Court found the Keogh Plan was operationally in default on the Petition Date and would not be

[1]This statute is now *Utah Code Ann.* § 78B-5-505(1)(a)(xiv) (2008).

"qualified" under § 401(a) but was nonetheless "described" in the section and therefore exempt.

The Bankruptcy Court also excluded from the exemption the $20,400 Debtor had paid into his Keogh during the year preceding filing for bankruptcy but the court did not exclude the earnings stemming from that amount. The Trustee, Mr. David L. Gladwell, appealed to the District Court arguing an unqualified plan cannot be described in section 401(a) and the court erred by failing to include the earnings of the contributed amount. The District Court affirmed the Bankruptcy Court's holdings. This appeal followed.

Since the disposition of this appeal centers on an important and unsettled question of the interpretation of Utah's bankruptcy statutes, we certify on our own motion, pursuant to Tenth Circuit Rule 27.1 and Utah Rule of Appellate Procedure 41, this issue to the Utah Supreme Court:

> 1. Can a Keogh plan be "described in" section 401(a) of the IRC despite failing to fulfill that section's requirements for qualification, thereby entitling debtor to exempt the plan from his bankruptcy estate property?

Because the resolution of the second issue, of whether the appropriate amount was excluded from the exemption, depends on the resolution of the first issue, we will stay its consideration until the Utah Supreme Court has decided the first issue.

I. Background

On January 28, 2000, Debtor filed a voluntary Chapter 7 bankruptcy petition. In his amended schedule he claimed a $333,835.65 exemption for his Keogh plan under

Utah Code Ann. § 78-23-5(1)(a)(x) (2000). This statute permits the funds in a Keogh plan that is "described in" § 401(a) of the Internal Revenue Code to be exempt from the claims of creditors and trustees in bankruptcy.

David Gladwell is the Trustee and he objected to the exemption on two bases: (1) because of operational defaults, the Keogh plan was not qualified under § 401(a) and therefore not described in the section and (2) even if the plan was qualified, the amount contributed in the year prior to the Petition Date would not be exempt from the exemption pursuant to *Utah Code Ann.* § 78-23-5(1)(b)(ii) (2000).[2]

From 1992 until the Petition Date, Debtor was an anesthesiologist. He worked as a sole practitioner until 1996 when he incorporated his practice. In 1992, Debtor established his Keogh plan by adopting a prototype plan offered through Charles Schwab & Co. Debtor was at all relevant times the sole employee under the plan and no one else participated in or contributed to the plan.

One of the non-waivable requirements of the plan was that all eligible employees be made participants. Although Debtor's wife was an eligible employee from 1993 until the Petition Date, she was never included as a participant under the plan. Debtor also failed to have his incorporated practice adopt the Keogh plan so he remained as if he was a self-employed individual despite the fact he was not. Although Debtor did make yearly contributions to the plan, they were not the 10% of each participant's annual compensation as the Keogh plan's documents required. Debtor also failed to have the

[2]This statute is now *Utah Code Ann.* § 78B-5-505(1)(b)(ii) (2008).

contributions made through Schwab as the custodian of the Keogh and instead directly made the investments himself. Debtor additionally made an automobile loan to Colleen Parker through the Keogh plan. In 2000, Debtor caused contributions to be made that were $1,455.75 in excess of the maximum contributions limits pursuant to § 415(c) of the Internal Revenue Code.

At trial, Trustee's expert, W. Waldan Lloyd, testified each of these defects would have disqualified the Keogh plan for tax purposes under § 401(a). Mr. Lloyd also testified each of those defects was curable through certain IRS procedures. The Employee Plans Compliance Resolution System (EPCRS) enables employers to self-correct operational errors in their Keogh plans in order to avoid sanctions and tax consequences the IRS would otherwise be authorized to impose. All of the defects that made the Keogh plan operationally in default were curable through EPCRS. The IRS had neither previously qualified nor disqualified the plan.

The Bankruptcy Court decided the Keogh plan was "operationally in default" on the Petition Date. Although the plan was "arguably not tax qualified" it was "nonetheless, described in Section 401(a)" and therefore exempt from the estate. Aplt. App. at 51. The Bankruptcy Court relied heavily on *In re Kaplan*, 162 B.R. 684 (Bankr. E.D. Pa. 1993) (holding the term "provided for under 401(a)" was broader than "qualified under"and thus a non-qualified plan was still conditionally exempted), and decided a plan could be described in § 401(a) without being qualified. *Id.* The court found $20,400 had been contributed to the Keogh in the year prior to filing for bankruptcy and excluded that portion of the plan from the exemption. *Id.* at 28, 31. The court did not include any earnings from that amount. *Id.*

The District Court affirmed the Bankruptcy Court. Trustee appealed.

II. Discussion

Whether a "Described" Plan Must be a "Qualified" Plan

Utah's legislature has opted out of the federal exemptions provided under the bankruptcy code. Therefore, the only exemptions available are under Utah law *See* 11 U.S.C. § 522(b); former *Utah Code Ann* § 78-23-15 (2000); current *Utah Code Ann* § 78B-5-513 (2008). On the Petition Date, *Utah Code Ann* § 78-23-5 read:

> (1)(a) an individual is entitled to exemption of the following property: ...
> (x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is *described in* Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended....
>
> (emphasis added)

Section 401 is entitled "Qualified pension, profit-sharing, and stock bonus plans" and subsection (a) lists the "requirements for qualification."

Trustee argues the plain language of Section 78-23-5(1)(b)(ii) requires a Keogh plan be qualified under Section 401(a) by meeting all of its requirements in order to be described in the Section and thus be exempt from the bankruptcy estate. Because the plain language of a statute is the first source a court will examine when interpreting a statute, the plain language should control. *In re Kunz*, 99 P.3d 793, 794 (Utah 2004). Since the Keogh Plan in question was operationally in default on the Petition Date and did not qualify under Section 401(a), it therefore would not be described in the section.

Additionally, Trustee asserts if a plan were permitted to not meet the section's requirements and yet still be described in that section, such an interpretation would render any reference to those requirements meaningless. Since courts are not supposed to interpret a statute in a manner that would nullify any portion of its language, such an interpretation would be incorrect. *See Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996).

Furthermore, Trustee argues the analysis of *In re Kaplan*, 162 B.R. 684, is inapplicable because that case dealt with a different state's statute and even so the Bankruptcy Court misapplied the case. *Kaplan's* holding turned on the fact the plan in question had previously been certified and its continued exemption depended on the IRS refraining from de-certifying the plan. *Id.* at 697-98 ("If the IRS intervenes at a later date and disqualifies the Plan, then and only then would it appear to us appropriate to preclude the Debtor from continuing to assert that its proceeds are exempt from claims of the Debtor's creditors.").

Debtor argues exemption statutes "are liberally construed in favor of the debtor" and thus the Keogh plan in question should be exempt. *Russell M. Miller Co. v. Givan*, 325 P.2d 908, 909-10 (Utah 1958). The legislative history of the statute is minimal and fails to provide guidance as to the legislative intent. Additionally, since the plan could have been remedied using the EPCRS program, any deficiencies were technical in nature and should not prevent the court from applying the exemption. Akin to the statute of *In re Kaplan*, this statute permits an unqualified plan to still be described in the section, and the court's policy of interpreting exemption statutes in favor of the debtor support the bankruptcy and district court's interpretation of the exemption statute. 162 B.R. at 697 (describing the exemption statute's language as "very broad, and that it appears to have been drafted to include even plans which are not technically 'tax qualified' within its scope").

In these circumstances, certification is appropriate. The plain language of the statute is ambiguous, the legislative history offers little guidance and the Utah courts have not previously squarely dealt with this issue. If the Utah Code was written to exempt from bankruptcy Keogh plans that fail to meet the qualifications of section 401(a) but are nonetheless described in the section then the bankruptcy and district courts were correct. If the Utah Code was written to integrate the Internal Revenue Code and have only those plans that met the requirements laid out in section 401(a) be exempt from bankruptcy then the courts were incorrect and should be reversed.

III. Conclusion

The Utah courts do not appear to have answered the question before us. Since this is a controlling question it is appropriate it be certified to the Utah Supreme Court. In the interests of comity and federalism, the Utah Supreme Court should be permitted to answer this question in the first instance if it should choose to do so under Utah R. App. P. 41.

The Clerk of this court shall transmit a copy of this certification order to counsel for all parties. The Clerk will also forward, under the Tenth Circuit's official seal, a copy of this certification order and the briefs filed in this court to the Utah Supreme Court.

We will appreciate the consideration of this request. This appeal is ordered STAYED pending consideration of the certified question.

For the Court,

Deanell R. Tacha

Deanell R. Tacha, Circuit Judge

Tab C

The below described is SIGNED.

Dated: June 08, 2008

William T. Thurman

WILLIAM T. THURMAN
U.S. Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re	Bankruptcy Case Number
DOUGLAS JAMES REINHART,	00-20995 WTT
Debtor.	[Chapter 7]

ORDER ON TRUSTEE'S OBJECTION TO EXEMPTIONS

The matter of the Trustee's *Objection to Exemptions*, filed in this case on June 15, 2000 (the "Objection"), which concerned the Debtor's claimed exemption in and to funds held in the Debtor's "Keogh" plan (the "Funds"), came on for trial on the 13th, 14th, and 15th days of May, 2008, before the Honorable William T. Thurman, United States Bankruptcy Judge. The Debtor appeared in person and was represented by Duane H. Gillman and Michael F. Thomson of

Durham Jones & Pinegar. The Trustee was represented by Adam S. Affleck and Andrew B. Clawson of Prince Yeates & Geldzahler.

The Court, having judged the credibility of the witnesses, having considered the documents admitted into evidence, and having heard the arguments of counsel, rendered its findings of fact and conclusions of law on the record. Based on such findings and conclusions, which are incorporated herein by reference, it is hereby

ORDERED that the Objection is OVERRULED pursuant to Utah Code Ann. § 78-23-5(1)(a)(x) (2000); and it is further

ORDERED that the Objection is SUSTAINED pursuant to Utah Code Ann. § 78-23-5(1)(b)(2) (2000) as to $20,400.00 of the Funds; and it is further

ORDERED that the Funds are exempt, except for $20,400.00 of the Funds; and it is further

ORDERED that a separate turnover order shall be entered requiring the Debtor to turnover $20,400.00 of the Funds to the Trustee; and it is further

ORDERED that the Court reserves the right to supplement its findings of fact, conclusions of law, and this Order with a written opinion at a later time.

---------- END OF DOCUMENT ----------

ATTORNEYS' CERTIFICATE OF SERVICE

I certify that on the 21st day of May, 2008, I caused to be served via hand delivery a copy of the proposed **ORDER ON TRUSTEE'S OBJECTION TO EXEMPTIONS** to the following parties:

Adam S. Affleck
Andrew B. Clawson
Prince Yeates & Geldzahler
City Center 1, Suite 900
175 East 400 South
Salt Lake City, UT 84111

Durham Jones & Pinegar

SLC_202117 1

CLERK'S CERTIFICATE OF SERVICE

I certify that I caused to be served a copy of the foregoing **ORDER ON TRUSTEE'S OBJECTION TO EXEMPTIONS** via US Mail, postage prepaid on the ___ day of May, 2008, to the following parties:

Adam S. Affleck
Andrew B. Clawson
Prince Yeates & Geldzahler
City Center 1, Suite 900
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Steven R. Bailey
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Douglas J. Reinhart
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Ogden, UT 84403

____

Tab D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re DOUGLAS JAMES REINHART, Debtor. DAVID L. GLADWELL, Trustee, Appellant, vs. DOUGLAS JAMES REINHART, Appellee.	**ORDER AFFIRMING BANKRUPTCY COURT ORDERS** **Case No. 2:08CV562 DAK**

This matter is before the court on the Trustee's appeal of two decisions by the Bankruptcy Court. Oral argument on the appeal was heard on February 4, 2009. At the hearing, the Trustee, David L. Gladwell, was represented by Adam S. Affleck, and the Debtor, Douglas James Reinhart, was represented by Duane H. Gillman. Before the hearing, the court carefully considered the briefs and other materials submitted by the parties. Since taking the motions under advisement, the court has further considered the law and facts relating to this appeal. Now being fully advised, the court renders the following Order.

The Bankruptcy Court's ruling that the funds contained in Debtor's Keogh Plan are exempt under Utah Code Ann. § 78-23-5(1)(a)(x) (2000) is affirmed for the same reasons explained by the Bankruptcy Court in the oral ruling on May 15, 2008. *See Transcript, Volume*

III, dated May 15, 2008, attached as Exhibit 5 to Appellant's Opening brief Appendix.

Next, the Trustee contends that the Bankruptcy Court's Turnover Order should have included post-contribution earnings on the $20,400 that was excepted from the exemption. It appears that the Bankruptcy Court exercised its equitable powers to limit the turnover amount to the principal amount contributed to the Keogh plan. The court finds no error in the Bankruptcy Court's decision and therefore affirms the decision.

Accordingly, IT IS HEREBY ORDERED that the two Bankruptcy Court Orders at issue in this case are AFFIRMED, and this case is now closed.

DATED this 6th day of February, 2009.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Judge

Tab E

Effective:[See Notes]

United States Code Annotated Currentness
Title 26 Internal Revenue Code (Refs & Annos)
Subtitle A Income Taxes (Refs & Annos)
Chapter 1 Normal Taxes and Surtaxes (Refs & Annos)
Subchapter D Deferred Compensation, Etc (Refs & Annos)
Part I Pension, Profit-Sharing, Stock Bonus Plans, Etc (Refs & Annos)
Subpart A General Rule (Refs & Annos)
→ § 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification.--A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section--

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan,

(2) if under the trust instrument it is impossible at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination) , [FN1]

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards), and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)) For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C)

(5) Special rules relating to nondiscrimination requirements.--

(A) Salaried or clerical employees.--A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees

(B) Contributions and benefits may bear uniform relationship to compensation.--A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) Certain disparity permitted.--A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) Integrated defined benefit plan.--

(i) In general.--A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of--

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) Final pay.--For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year--

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 or more plans treated as single plan.--For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan--

(i) Contributions.--If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) Benefits.--If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) Social security retirement age.--For purposes of testing for discrimination under paragraph (4)--

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined)

(G) Governmental plans.--Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d))

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards)

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan

(9) Required distributions.--

(A) In general.--A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee--

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary)

(B) Required distribution where employee dies before entire interest is distributed.--

(i) Where distributions have begun under subparagraph (A)(ii).--A trust shall not constitute a qualified trust under this section unless the plan provides that if--

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death

(ii) 5-year rule for other cases.--A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.--If--

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special rule for surviving spouse of employee.--If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee--

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70 1/2, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required beginning date.--For purposes of this paragraph--

(i) In general.--The term "required beginning date" means April 1 of the calendar year following the later of--

(I) the calendar year in which the employee attains age 70 1/2, or

(II) the calendar year in which the employee retires.

(ii) Exception.--Subclause (II) of clause (i) shall not apply--

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70 1/2, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) Actuarial adjustment.--In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70 1/2, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70 1/2 in which the employee was not receiving any benefits under the plan.

(iv) Exception for governmental and church plans.--Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) Life expectancy.--For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) Designated beneficiary.--For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) Treatment of payments to children.--Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) Treatment of incidental death benefit distributions.--For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) Temporary waiver of minimum required distribution.--

(i) In general.--The requirements of this paragraph shall not apply for calendar year 2009 to--

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) Special rules regarding waiver period.--For purposes of this paragraph--

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2009.

(10) Other requirements.--

(A) Plans benefiting owner-employees.--In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) Top-heavy plans.--

(i) In general.--In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) Plans which may become top-heavy.--Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions--

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) Exemption for governmental plans.--This subparagraph shall not apply to any governmental plan.

(11) Requirement of joint and survivor annuity and preretirement survivor annuity.--

(A) In general.--In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless--

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) Plans to which paragraph applies.--This paragraph shall apply to--

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless--

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) Exception for certain ESOP benefits.--

(i) In general.--In the case of--

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) Nonforfeitable benefit must be paid in full, etc.--In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) Special rule where participant and spouse married less than 1 year.--A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) Exception for plans described in section 404(c).--This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) Cross reference.--For--

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) Assignment and alienation.--

(A) In general.--A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) Special rules for domestic relations orders.--Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) Special rule for certain judgments and settlements.--Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if--

(i) the order or requirement to pay arises--

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made--

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) Survivor annuity.--

(i) In general.--The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if--

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) Definition.--For purposes of this subparagraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which--

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary

(15) a [FN2] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part--

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415

(17) Compensation limit.--

(A) In general.-- A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000

(B) Cost-of-living adjustment.--The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5 000

[(18) **Repealed.** Pub L 97-248, Title II, § 237(b), Sept 3, 1982, 96 Stat 511]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

[**(21) Repealed.** Pub.L. 99-514, Title XI, § 1171(b)(5), Oct. 22, 1986, 100 Stat. 2513]

(22) If a defined contribution plan (other than a profit-sharing plan)--

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) Requirement that actuarial assumptions be specified.--A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) Additional participation requirements.--

(A) In general.--In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of--

(i) 50 employees of the employer, or

(ii) the greater of--

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) Treatment of excludable employees.--

(i) In general.--A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) Separate application for certain excludable employees.--If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if--

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) Special rule for collective bargaining units.--Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) Paragraph not to apply to multiemployer plans.--Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) Special rule for certain dispositions or acquisitions.--Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) Separate lines of business.--At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term “separate line of business” has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) Exception for governmental plans.--This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) Regulations.--The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

[(I) Redesignated (H)]

(27) Determinations as to profit-sharing plans.--

(A) Contributions need not be based on profits.--The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) Plan must designate type.--In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) Additional requirements relating to employee stock ownership plans.--

(A) In general.--In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) Diversification of investments.--

(i) In general.--A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) Method of meeting requirements.--A plan shall be treated as meeting the requirements of clause (i) if--

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) Qualified participant.--For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) Qualified election period.--For purposes of this subparagraph, the term "qualified election period" means the 6-plan-year period beginning with the later of--

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) Exception.--This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) Use of independent appraiser.--A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) Benefit limitations.--In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) Limitations on elective deferrals.--In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) Direct transfer of eligible rollover distributions.--

(A) In general.--A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution--

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) Certain mandatory distributions.--

(i) In general.--In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if--

(I) a distribution described in clause (ii) in excess of $ 1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) Eligible plan.--For purposes of clause (i), the term "eligible plan" means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) Limitation.--Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraphs (A) and (B) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred--

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) Eligible rollover distribution.--For purposes of this paragraph, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A).

(E) Eligible retirement plan.--For purposes of this paragraph, the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) Treatment of failure to make certain payments if plan has liquidity shortfall.--

(A) In general.--A trust forming part of a pension plan to which section 430(j)(4) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section 430(j)(4)).

(B) Payments described.--A payment is described in this subparagraph if such payment is--

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(C) Period of shortfall.--For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) by reason of section 430(j)(4)(A) thereof.

(33) Prohibition on benefit increases while sponsor is in bankruptcy.--

(A) In general.--A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of--

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) Exceptions.--This paragraph shall not apply to any plan amendment if--

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) Plans to which this paragraph applies.--This paragraph shall apply only to plans (other than multiemployer plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) Employer.--For purposes of this paragraph, the term "employer" means the employer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) Benefits of missing participants on plan termination.--In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) Diversification requirements for certain defined contribution plans.--

(A) In general.--A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) Employee contributions and elective deferrals invested in employer securities.--In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) Employer contributions invested in employer securities.--In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who--

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) Investment options.--

(i) In general.--The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) Treatment of certain restrictions and conditions.--

(I) Time for making investment choices.--A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) Certain restrictions and conditions not allowed.--Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) Applicable defined contribution plan.--For purposes of this paragraph--

(i) In general.--The term "applicable defined contribution plan" means any defined contribution plan which holds any publicly traded employer securities.

(ii) Exception for certain ESOPs.--Such term does not include an employee stock ownership plan if--

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) Exception for one participant plans.--Such term does not include a one-participant retirement plan.

(iv) One-participant retirement plan.--For purposes of clause (iii), the term "one-participant retirement plan" means a retirement plan that on the first day of the plan year--

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) Certain plans treated as holding publicly traded employer securities.--

(i) In general.--Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) Exception for certain controlled groups with publicly traded securities.--Clause (i) shall not apply to a plan if--

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) Definitions.--For purposes of this subparagraph, the term--

(I) "controlled group of corporations" has the meaning given such term by section 1563(a), except that "50 percent" shall be substituted for "80 percent" each place it appears,

(II) "employer corporation" means a corporation which is an employer maintaining the plan, and

(III) "parent corporation" has the meaning given such term by section 424(e).

(G) Other definitions.--For purposes of this paragraph--

(i) Applicable individual.--The term "applicable individual" means--

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) Elective deferral.--The term "elective deferral" means an employer contribution described in section 402(g)(3)(A).

(iii) Employer security.--The term "employer security" has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) Employee stock ownership plan.--The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(v) Publicly traded employer securities.--The term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

(vi) Year of service.--The term "year of service" has the meaning given such term by section 411(a)(5).

(H) Transition rule for securities attributable to employer contributions.--

(i) Rules phased in over 3 years.--

(I) In general.--In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) Exception for certain participants aged 55 or over.--Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) Applicable percentage.--For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	**The applicable percentage is:**
1st	33
2d	66
3d and following	100.

(36) Distributions during working retirement.--A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) Death benefits under USERRA-qualified active military service.--A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan.--A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees.--For purposes of this section--

(1) Self-employed individual treated as employee.--

(A) In general.--The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual.--The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year--

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income.--

(A) In general.--The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined--

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections [FN3] 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).

[(B) **Repealed.** Pub.L. 89-809, Title II, § 204(c), Nov. 13 1966, 80 Stat. 1577]

(C) Income from disposition of certain property.--For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee.--The term "owner-employee" means an employee who--

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.--An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees.--The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan--

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen.--For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees.--A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) **Repealed.** Pub.L. 98-369, Title VII, § 713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts.--For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if--

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined.--For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents.--Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if--

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.

(i) Certain union-negotiated pension plans.--In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that--

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[**(j) Repealed.** Pub.L. 97-248, Title II, § 238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements.--

(1) General rule.--A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement.--A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)--

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election--

(i) may not be distributable to participants or other beneficiaries earlier than--

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59 1/2,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards.--

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless--

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of--

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee--

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include--

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be--

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) Special rule for early participation.--If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) Governmental plan.--A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements.--

(A) Benefits (other than matching contributions) must not be contingent on election to defer.--A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations.--

(i) Tax-exempts eligible.--Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible.--A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments.--An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans.--Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee.--For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan.--For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan--

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan.--For purposes of this subsection--

(A) In general.--The term "rural cooperative plan" means any pension plan--

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined.--For purposes of subparagraph (A), the term "rural cooperative" means--

(i) any organization which--

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which--

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),, [FN4] (iii), or (iv).

(C) Special rule for certain distributions.--A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59 1/2. For purposes of this section, the term "hardship distribution" means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) Arrangement not disqualified if excess contributions distributed.--

(A) In general.--A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year--

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions.--For purposes of subparagraph (A), the term "excess contributions" means, with respect to any plan year, the excess of--

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions.--Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply.--No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal.--For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference.--

For excise tax on certain excess contributions, see section 4979.

(9) Compensation.--For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan--

(A) In general.--An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions.--

(i) In general.--A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) Lump-sum distribution.--For purposes of this subparagraph, the term "lump-sum distribution" has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from--

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

[**(C) Repealed.** Pub.L. 107-16, Title VI, § 646(a)(1)(C)(ii), June 7, 2001, 115 Stat. 126]

(11) Adoption of simple plan to meet nondiscrimination tests.--

(A) In general.--A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets--

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements.--

(i) In general.--The requirements of this subparagraph are met if, under the arrangement--

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution.--An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements.--

(I) In general.--Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period.--The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement.--The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule.--

(i) Definitions.--For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules.--A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

[**(E) Repealed.** Pub.L. 107-16, Title VI, § 611(f)(3)(B), June 7, 2001, 115 Stat. 97]

(12) Alternative methods of meeting nondiscrimination requirements.--

(A) In general.--A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement--

(i) meets the contribution requirements of subparagraph (B) or (C), and

(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions.--

(i) In general.--The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to--

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees.--The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs.--If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if--

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions.--The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement.--An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which--

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements.--

(i) Withdrawal and vesting restrictions.--An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account.--An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans.--An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrange- ment.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements.--

(A) In general.--A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement.--For purposes of this paragraph, the term "qualified automatic contribution arrangement" means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral.--

(i) In general.--The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) Election out.--The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election--

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage.--For purposes of this subparagraph, the term "qualified percentage" means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least--

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required.--Clause (i) may be applied without taking into account any employee who--

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions.--

(i) In general.--The requirements of this subparagraph are met if, under the arrangement, the employer--

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions.--The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions.--An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met--

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a non-forfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contribu- tions.

(iv) Application of certain other rules.--The rules of subparagraphs (E) (ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements.--

(i) In general.--The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employ- ee's rights and obligations under the arrangement which--

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement ap- plies.

(ii) Timing and content requirements.--A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless--

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(l) Permitted disparity in plan contributions or benefits.--

(1) In general.--The requirements of this subsection are met with respect to a plan if--

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan.--

(A) In general.--A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of--

(i) the base contribution percentage, or

(ii) the greater of--

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages.--For purposes of this paragraph--

(i) Excess contribution percentage.--The term "excess contribution percentage" means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) Base contribution percentage.--The term "base contribution percentage" means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) Defined benefit plan.--A defined benefit plan meets the requirements of this paragraph if--

(A) Excess plans.--

(i) In general.--In the case of a plan other than an offset plan--

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages.--For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans.--In the case of an offset plan, the plan provides that--

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3).--For purposes of paragraph (3)--

(A) Maximum excess allowance.--The maximum excess allowance is equal to--

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) Maximum offset allowance.--The maximum offset allowance is equal to--

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 percent of the participant's final average compensation, and

(ii) in the case of total benefits, 3/4 percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions.--

(i) In general.--The Secretary shall prescribe regulations requiring the reduction of the 3/4 percentage factor under subparagraph (A) or (B)--

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions.--Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan.--The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules.--For purposes of this subsection--

(A) Integration level.--

(i) In general.--The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation.--The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants.--A plan's integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels.--Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) Compensation.--The term "compensation" has the meaning given such term by section 414(s).

(C) Average annual compensation.--The term "average annual compensation" means the participant's highest average annual compensation for--

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation.--

(i) In general.--The term "final average compensation" means the participant's average annual compensation for--

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation.--A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation.--

(i) In general.--The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year.--For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age.--For purposes of this subparagraph, the term "social security retirement age" has the meaning given such term by section 415(b)(8).

(F) Regulations.--The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including--

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads.--In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions.--

(1) In general.--A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements.--

(A) Contribution percentage requirement.--A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of--

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan.--If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) Contribution percentage.--For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of--

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions.--For purposes of this subsection--

(A) Matching contribution.--The term "matching contribution" means--

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) Elective deferral.--The term "elective deferral" means any employer contribution described in section 402(g)(3) .

(C) Qualified nonelective contributions.--The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which--

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration.--

(A) In general.--Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants.--If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation.--If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year.--

(A) In general.--A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions.--For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of--

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions.--Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g).--The determination of the amount of excess aggregate contributions with respect to a plan shall be made after--

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) Treatment of distributions.--

(A) Additional tax of section 72(t) not applicable.--No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions.--Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee.--For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests.--A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan--

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests.--

(A) In general.--A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan--

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions.--The requirements of this subparagraph are met if--

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements.--A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan--

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference.--

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders.--The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) Cross reference.--

For exemption from tax of a trust qualified under this section, see section 501(a).

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 134; Oct. 10, 1962, Pub.L. 87-792, § 2, 76 Stat. 809; Oct. 23, 1962, Pub.L. 87-863, § 2(a), 76 Stat. 1141; Feb. 26, 1964, Pub.L. 88-272, Title II, § 219(a), 78 Stat. 57; July 30, 1965, Pub.L. 89-97, Title I, § 106(d)(4), 79 Stat. 337; Nov. 13, 1966, Pub.L. 89-809, Title II, §§ 204(b)(1), (c), 205(a), 80 Stat. 1577, 1578; Jan. 12, 1971, Pub.L. 91-691, § 1(a), 84 Stat. 2074; Sept. 2, 1974, Pub.L. 93-406, Title II, §§ 1012(b), 1016(a)(2), 1021, 1022(a) to (d), (f), 1023, 2001(c) to (e)(4), (h)(1), 2004(a)(1), 88 Stat. 913, 929, 935, 937 to 940, 943, 952 to 955, 957, 979; Apr. 15, 1976, Pub.L. 94-267, § 1(c)(1), (2), 90 Stat. 367; Oct. 4, 1976, Pub.L. 94-455, Title VIII, § 803(b)(2), Title XV, § 1505(b), Title XIX, §§ 1901(a)(56), 1906(b)(13)(A), 90 Stat. 1584, 1738, 1773, 1834; Nov. 6, 1978, Pub.L. 95-600, Title I, §§ 135(a), 141(f)(3), 143(a), 152(e), 92 Stat. 2785, 2795, 2796, 2799; Apr. 1, 1980, Pub.L. 96-222, Title I, § 101(a)(7)(L)(i)(V), (9), (14)(E)(iii), 94 Stat. 199, 201, 205; Sept. 26, 1980, Pub.L. 96-364, Title II, § 208(a), (e), Title IV, § 410(b), 94 Stat. 1289, 1290, 1308; Dec. 28, 1980, Pub.L. 96-605, Title II, §§ 221(a), 225(b)(1), (2), 94 Stat. 3528, 3529; Aug. 13, 1981, Pub.L. 97-34, Title III, §§ 312(b)(1), (c)(2) to (4), (e)(2), 314(a)(1), 335, 338(a), 95 Stat. 283 to 286, 297, 298; Sept. 3, 1982, Pub.L. 97-248, Title II, §§ 237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), 96 Stat. 511 to 513, 520, 521, 527, 533; Jan. 12, 1983, Pub.L. 97-448, Title I, § 103(c)(10)(A), (d)(2), (g)(2)(A), Title III, § 306(a)(12), 96 Stat. 2377 to 2379, 2405; Apr. 20, 1983, Pub.L. 98-21, Title I, § 124(c)(4)(A), 97 Stat. 91; July

18, 1984, Pub.L. 98-369, Title II, § 211(b)(5), Title IV, §§ 474(r)(13), 491(e)(4), (5), Title V, §§ 521(a), 524(d)(1), 527(a), (b), 528(b), Title VII, § 713(c)(2)(A), (d)(3), 98 Stat. 754, 842, 853, 865, 872, 875, 876, 877, 957, 958; Aug. 23, 1984, Pub.L. 98-397, Title II, §§ 203(a), 204(a), Title III, § 301(b), 98 Stat. 1440, 1445, 1451; Oct. 22, 1986, Pub.L. 99-514, Title XI, §§ 1106(d)(1), 1111(a), (b), 1112(b), (d)(1), 1114(b)(7), 1116(a) to (e), 1117(a), 1119(a), 1121(b), 1136(a), 1143(a), 1145(a), 1171(b)(5), 1174(c)(2)(A), 1175(a)(1), 1176(a), Title XVIII, §§ 1848(b), 1852(a)(4)(A), (6), (b)(8), (g), (h)(1), 1879(g)(1), (2), 1898(b)(2)(A), (3)(A), (7)(A), (13)(A), (14)(A), (c)(3), 1899A(10), 100 Stat. 2423, 2435, 2439, 2444, 2445, 2451, 2454 to 2456, 2459, 2463, 2465, 2485, 2490, 2513, 2518, 2519, 2857, 2865 to 2869, 2906, 2907, 2945, 2948, 2950, 2953, 2958; Dec. 22, 1987, Pub.L. 100-203, Title IX, § 9341(a), 101 Stat. 1330-369; Nov. 10, 1988, Pub.L. 100-647, Title I, §§ 1011(c)(7)(A), (d)(4), (e)(3), (g)(1) to (3), (h)(3), (k)(1)(A), (B), (2) to (7), (9), (l)(1) to (5)(A), (6), (7), 1011A(j), (l), 1011B(j)(1), (2), (6), (k)(1), (2), Title VI, §§ 6053(a), 6055(a), 6071(a), (b), 102 Stat. 3458, 3459, 3460, 3463, 3464, 3468, 3469, 3470, 3483, 3492, 3493, 3696, 3697, 3705; Nov. 8, 1989, Pub.L. 101-140, Title II, § 203(a)(5), 103 Stat. 830; Dec. 19, 1989, Pub.L. 101-239, Title VII, §§ 7311(a), 7811(g)(1), (h)(3), 7816(l), 7881(i)(1)(A), (4)(A), 103 Stat. 2354, 2409, 2421, 2442; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 12011(b), 104 Stat. 1388-571; July 3, 1992, Pub.L. 102-318, Title V, §§ 521(b)(5) to (8), 522(a)(1), 106 Stat. 310, 313; Aug. 10, 1993, Pub.L. 103-66, Title XIII, § 13212(a), 107 Stat. 471; Dec. 8, 1994, Pub.L. 103-465, Title VII, §§ 732(a), 751(a)(9)(C), 766(b), 776(d), 108 Stat. 5004, 5021, 5037, 5048; Aug. 20, 1996, Pub.L. 104-188, Title I, §§ 1401(b)(5), (6), 1404(a), 1422(a), (b), 1426(a), 1431(b)(2), (c)(1)(B), 1432(a), (b), 1433(a) to (e), 1441(a), 1443(a), (b), 1445(a), 1459(a), (b), 1704(a), (t)(67), 110 Stat. 1789, 1791, 1800, 1801, 1803 to 1809, 1811, 1820, 1878, 1890; Aug. 5, 1997, Pub.L. 105-34, Title XV, §§ 1502(b), 1505(a)(1), (2), (b), 1525(a), 1530(c)(1), Title XVI, § 1601(d)(2)(A), (B), (D), (3), 111 Stat. 1060, 1063, 1072, 1078, 1088, 1089; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(7) [Title III, § 316(c)], 114 Stat. 2763, 2763A-644; June 7, 2001, Pub.L. 107-16, Title VI, §§ 611(c), (f)(3), (g)(1), 641(e)(3), 643(b), 646(a)(1), 657(a), 666(a), 115 Stat. 97, 99, 120, 122, 126, 135, 143; Mar. 9, 2002, Pub.L. 107-147, Title IV, § 411(o)(2), (q)(1), 116 Stat. 48, 51; Oct. 4, 2004, Pub.L. 108-311, Title IV, § 407(b), 118 Stat. 1190; Aug. 17, 2006, Pub.L. 109-280, Title I, § 114(a), Title VIII, §§ 827(b)(1), 861(a), (b), Title IX, §§ 901(a)(1), (2)(A), 902(a), (b), (d)(2)(C), (D), (e)(3)(B), 905(b), 120 Stat. 853, 1000, 1021, 1026, 1029, 1033, 1035, 1038, 1050; June 17, 2008, Pub.L. 110-245, Title I, § 104(a), 122 Stat. 1626; Dec. 23, 2008, Pub.L. 110-458, Title I, §§ 101(d)(2)(A), (B), (C), 109(a), (b)(1), (2), Title II, § 201(a), 122 Stat. 5099, 5111, 5116.)

[FN1] So in original. Period before semicolon probably should be a closing parenthesis.

[FN2] So in original. Probably should be capitalized.

[FN3] So in original. Probably should be "section".

[FN4] So in original.

2008 Acts. Except as otherwise provided in §§ 101 to 111 of Pub.L. 110-458, amendments by § 101 to 111 of Pub.L. 110-458 shall take effect as if included in the provisions of Pub.L. 109-280 to which the amendments relate, see Pub.L. 110-458, § 112, set out as a note under 26 U.S.C.A. § 72.

2004 Acts. Pub.L. 108-311, Title IV, § 407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: "The amendments made by this section [amending subsec. (a)(26)(C) to (I) of this section and 26 U.S.C.A. § 1377] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub.L. 104-188, Aug. 20, 1996, 110 Stat. 1755; see Tables for classification] to which they relate."

2002 Acts. Except as otherwise provided, amendments by section 411 of Pub.L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub.L. 107-16, June 7, 2001, 115 Stat. 38] to which they relate, see section 411(x) of Pub.L. 107-147, set out as a note under 26 U.S.C.A. § 25B.

Current through P.L. 111-160 (excluding P.L. 111-148, 111-152, and 111-159) approved 4-26-10

END OF DOCUMENT

Tab F

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART III. Procedure
CHAPTER 23. UTAH EXEMPTIONS ACT

78-23-5 Property exempt from execution.

(1) (a) An individual is entitled to exemption of the following property:

(i) a burial plot for the individual and his family;

(ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(iii) benefits the individual or his dependent have received or are entitled to receive because of disability, illness, or unemployment from any source;

(iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or his dependent to pay for that care;

(v) veterans benefits;

(vi) money or property received, and rights to receive money or property for child support;

(vii) one clothes washer and dryer, one refrigerator, one freezer, one stove, one microwave oven, one sewing machine, all carpets in use, provisions sufficient for 12 months actually provided for individual or family use, all wearing apparel of every individual and dependent, not including jewelry or furs, and all beds and bedding for every individual or dependent;

(viii) works of art depicting the debtor or the debtor and his resident family, or produced by the debtor or the debtor and his resident family, except works of art held by the debtor as part of a trade or business;

(ix) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended; and

(xi) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p) of the United States Internal Revenue Code of 1986, as amended.

(b) The exemption granted by Subsection (1)(a)(x) does not apply to:

(i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p) of the United States Internal Revenue Code of 1986, as amended; or

(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy.

(2) Exemptions under this section do not limit items which may be claimed as exempt under Section 78-23-8.

History: C. 1953, **78-23-5**, enacted by L. 1981, ch. 111, § 5; 1989, ch. 19, § 1; 1997, ch. 138, § 2; 1999, ch. 370, § 2.

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1997 amendment, effective May 5, 1997, inserted "one microwave oven" and substituted "12" for "three" in Subsection (1)(a)(vii); in Subsection (1)(a)(x), substituted "held for or payable" for "payable" and added § 408 to the list of Internal Revenue Code sections; deleted "the assets of bankruptcy proceedings filed before January 1, 1989" from the list in Subsection (1)(b); and redesignated subsections and made several other stylistic changes.

The 1999 amendment, effective May 3, 1999, inserted "408A" in the string of sections in Subsection (1)(x).

Federal Law. --The Internal Revenue Code of 1986, cited in Subsection (1), is Title 26 of the U.S. Code.

NOTES TO DECISIONS

ANALYSIS

Waiver of exemption.
Cited.

Waiver of exemption.

A waiver of exemption from execution need not be supported by consideration. Oliver v. Mitchell, 14 Utah 2d 9, 376 P.2d 390 (1962).

Cited in Utah Farm Prod. Credit Ass'n v. Labrum, 762 P.2d 1070 (Utah 1988).

COLLATERAL REFERENCES

Am.Jur.2d. --31 Am. Jur. 2d Exemptions §§ 224 et seq.

C.J.S. --35 C.J.S. Exemptions § 31 et seq.

U.C.A. 1953 § **78-23-5**

UT ST § **78-23-5**

END OF DOCUMENT

Tab G

C

Formerly cited as UT ST § 78-23-5

West's Utah Code Annotated Currentness
Title 78B. Judicial Code
Chapter 5. Procedure and Evidence
Part 5. Utah Exemptions Act (Refs & Annos)

→§ 78B-5-505. Property exempt from execution

(1)(a) An individual is entitled to exemption of the following property:

(i) a burial plot for the individual and the individual's family;

(ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(iii) benefits the individual or the individual's dependent have received or are entitled to receive from any source because of:

(A) disability;

(B) illness; or

(C) unemployment;

(iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or the individual's dependent to pay for that care;

(v) veterans benefits;

(vi) money or property received, and rights to receive money or property for child support;

(vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;

(viii)(A) one:

(I) clothes washer and dryer;

(II) refrigerator;

(III) freezer;

(IV) stove;

(V) microwave oven; and

(VI) sewing machine;

(B) all carpets in use;

(C) provisions sufficient for 12 months actually provided for individual or family use;

(D) all wearing apparel of every individual and dependent, not including jewelry or furs; and

(E) all beds and bedding for every individual or dependent;

(ix) except for works of art held by the debtor as part of a trade or business, works of art:

(A) depicting the debtor or the debtor and his resident family; or

(B) produced by the debtor or the debtor and his resident family;

(x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;

(xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;

(xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;

(xiii) proceeds and avails of any unmatured life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;

(xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e), Internal Revenue Code; and

(xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code.

(b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:

(i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or

(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy. This may not include amounts directly rolled over from other funds which are exempt from attachment under this section.

(2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.

(3) Exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

CREDIT(S)

Laws 2008, c. 3, § 801, eff. Feb. 7, 2008.

HISTORICAL AND STATUTORY NOTES

Prior Laws:

Laws 1981, c. 111, § 5.

Laws 1989, c. 19, § 1.

Laws 1997, c. 138, § 2.

Laws 1999, c. 370, § 2.

Laws 2004, c. 135, § 2.

Laws 2005, c. 234, § 1.

Laws 2007, c. 323, § 1.

C. 1953, § 78-23-5.

LAW REVIEW AND JOURNAL COMMENTARIES

Bankruptcy exemption planning: Counseling in shades of gray. Marker, 21 Utah B.J. 20 (March/April 2008).

LIBRARY REFERENCES

Exemptions 31 to 53.
Westlaw Topic No. 163.
C.J.S. Exemptions §§ 32 to 43, 47 to 132.

NOTES OF DECISIONS

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1. In general

Persons who are qualified under statute are entitled to exemption of property from execution by creditors to set aside conveyance as fraudulent, but persons who cannot qualify under statute are to be excluded from its operation, under maxim that when statute enumerates things upon which it is to operate, it is to be construed as excluding from its effect those not expressly mentioned. Comp.Laws 1917, § 2898, as amended by Laws 1923, c. 71. Zuniga v. Evans, 1935, 87 Utah 198, 48 P.2d 513, 101 A.L.R. 532. Fraudulent Conveyances 52(1)

2. Preemption

Utah exemption for debtor's interest in pensions and retirement plans was preempted, to extent it applied to debtors' interest in ERISA-qualified employee benefit plans. Employee Retirement Income Security Act of 1974, § 514(a), 29 U.S.C.A. § 1144(a); U.C.A.1953, 78-23-5(1)(j), 78-23-6. In re Fullmer, 1991, 127 B.R. 55, reversed 977 F.2d 595. Exemptions 3; States 18.35

Utah statute exempting retirement plan or arrangement described in listed sections of the Internal Revenue Code, including § 401k, by its express reference to ERISA-qualified retirement plans relates to ERISA and is thereby preempted. Employee Retirement Income Security Act of 1974, § 514(a), as amended, 29 U.S.C.A. § 1144(a); U.C.A.1953, § 78-23-5(1)(j). In re Martin, 1990, 115 B.R. 311, affirmed 127 B.R. 55, reversed 977 F.2d 595. Exemptions 3; States 18.35

3. Bankruptcy

Once the bankruptcy court has set aside the exempt property of the bankrupt, that property is no longer under the jurisdiction of bankruptcy court, and its disposition becomes a matter of the state law, but as long as the proceedings in bankruptcy court are extant, an ordinary judgment creditor cannot issue execution in the state court. Bankr.Act, § 6, 11 U.S.C.A. § 24. Ostler Land & Livestock Co. v. Brough, 1947, 111 Utah 336, 178 P.2d 911. Bankruptcy 2392; Bankruptcy 2771.1

Where creditors obtained a judgment which created a judgment lien against debtors' property more than four months before debtors' bankruptcy proceedings, the judgment lien after debtor's discharge in bankruptcy remained attached to any of debtors' property which was not exempt from execution. Rev.St.1933, 38- 0-1. Brown v. Cleverly, 1938, 96 Utah 116, 83 P.2d 1009, rehearing denied 96 Utah 120, 85 P.2d 769. Bankruptcy 3414

4. Contempt

Order in garnishment action, instructing debtors' attorney to hold and safely keep any and all property in his possession belonging to debtors for benefit of bankruptcy trustee, unambiguously applied to funds exempt from garnishment, as well as nonexempt funds, even though entered in proceeding on one debtor's motion to strike garnishment; hence, attorney could be held in contempt for converting some of the funds to his own use. U.C.A.1953, 78-23-5(3), 78- 23-6(3), 78-23-15. Utah Farm Production Credit Ass'n v. Labrum, 1988, 762 P.2d 1070. Contempt 20

5. Household goods

Fact that household goods might be subject to exemption from execution did not preclude husband from alienating the property by giving bank a security interest in the property and did not preclude bank from foreclosing on that security interest. U.C.A.1953, 78-23-1. Clearfield State Bank v. Contos, 1977, 562 P.2d 622 . Secured Transactions 12

6. Life insurance

Exemption from execution of all moneys, benefits, privileges or immunities accruing or in any manner growing out of any life insurance applies to beneficiaries of any policies as well as to insured. U.C.A.1953, 78-23- 1(8). Oliver v. Mitchell, 1962, 14 Utah 2d 9, 376 P.2d 390. Exemptions 50(1)

Attorney of beneficiary of life policy had authority to partially waive exemption of proceeds from execution. U.C.A.1953, 78-23-1(8). Oliver v. Mitchell, 1962, 14 Utah 2d 9, 376 P.2d 390. Exemptions 91

Beneficiary of life policy did not waive applicable exemption from execution of proceeds by his failure to assert it until after denial of two previous motions for release of garnishment made on other grounds. U.C.A.1953, 78-23-1(8). Oliver v. Mitchell, 1962, 14 Utah 2d 9, 376 P.2d 390. Exemptions 93

Statement of attorney of beneficiary of life policy that to settle matter, beneficiary offered to waive his exemption from execution as to one-half of proceeds of policy if other half would be released and subsequent oral offer of waiver by attorney constituted valid waiver not forbidden by public policy and release of garnishment, sparing beneficiary the inconvenience of proving fund was exempt before he could obtain release of part of money for his personal use, was legal consideration for the waiver, if any consideration was needed. U.C.A.1953, 78-23-1(8). Oliver v. Mitchell, 1962, 14 Utah 2d 9, 376 P.2d 390. **Exemptions** 93

Proceeds received by beneficiary under terms of an annuity contract between the decedent and employer were not "proceeds of life insurance" and hence were subject to tax under the inheritance tax statute. U.C.A.1953, 78-23-1(8), 31-1-7, 31-2-16, 31-5-19, 31-11-2, 31-22-3, 31-23-1 et seq. In re Clark's Estate, 1960, 10 Utah 2d 427, 354 P.2d 112. **Taxation** 3319

7. **Amounts contributed**

Rollovers from exempt retirement accounts to individual retirement accounts (IRAs) were not "amounts contributed" within the meaning of statute which excludes from exemption amounts contributed by or on behalf of a debtor within one year before the debtor files for bankruptcy; although the rollovers occurred within one year of filing, the debtors contributed the funds more than one year before filing, the rollovers between exempt accounts did not convert non-exempt funds into exempt funds or exempt funds into non-exempt funds and, thus, did only transferred assets already protected from execution, and construing the ambiguous statute to favor debtors would not violate the implied policy favoring creditors. In re Kunz, 2004, 99 P.3d 793, 507 Utah Adv. Rep. 16, 2004 UT 71. **Exemptions** 49

U.C.A. 1953 § 78B-5-505, UT ST § 78B-5-505

Current through 2009 General Session and 2009 First Special Session

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